

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

_____	:	
PETITION OF ATLANTIC CITY	:	
ELECTRIC COMPANY, CONECTIV	:	BPU Docket No. EM01050308
COMMUNICATIONS, INC. AND	:	OAL Docket No. PUC 4036-01
NEW RC, INC. FOR APPROVAL	:	
UNDER <u>N.J.S.A.</u> 48:2-51.1 AND	:	STIPULATION OF SETTLEMENT
<u>N.J.S.A.</u> 48:3-10 OF A CHANGE IN	:	
OWNERSHIP AND CONTROL	:	
_____	:	

WHEREAS, Atlantic City Electric Company, a New Jersey public utility company ("Atlantic"), Conectiv Communications, Inc. ("CCI") and New RC, Inc., a recently formed Delaware corporation ("New RC"¹) (collectively "Petitioners"), filed a Petition with the New Jersey Board of Public Utilities (the "Board" or the "BPU"), under BPU Docket No. EM01050308, seeking approval of the proposed change in ownership and acquisition of control of Atlantic (the "Merger") pursuant to an Agreement and Plan of Merger dated as of February 9, 2001 among PHI, Potomac Electric Power Company ("Pepco"), and Conectiv, the parent holding company of Atlantic, CCI and Delmarva Power & Light Company;

WHEREAS, on June 1, 2001, the Board referred the Petition to the Office of Administrative Law ("OAL") for hearings as a contested case in accordance with provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.; and

WHEREAS, the other parties in this proceeding are the Staff of the Board, the Division of the Ratepayer Advocate, the City of Vineland², Cogentrix Energy, Inc., Community Energy, Inc., Enron Corp., the Independent Energy Producers of New Jersey ("IEPNJ"), The

¹ Subsequent to the hearings in this matter, New RC, Inc. has been formally named Pepco Holdings, Inc. ("PHI").

New Power Company, Public Service Electric and Gas, PSEG Power LLC and PSEG Nuclear LLC, and Shell Energy Services (collectively, with the Petitioners, the "Parties"); and

WHEREAS, the OAL assigned Administrative Law Judge ("ALJ") Diana Sukovich, who conducted four days of evidentiary hearings, on November 13 to 16, 2001, during which an extensive record was developed; and

WHEREAS, a public hearing was held on November 28, 2001, at the Atlantic County Public Library in Mays Landing, New Jersey, before ALJ Wells; and

WHEREAS, subsequent to the hearings, ALJ Sukovich urged the parties to enter into settlement negotiations so as to present the Court with a stipulation of mutually acceptable conditions of merger approval. Joint Petitioners have met with all active parties on several occasions and further have participated in numerous discussions and meetings with individual parties; and

WHEREAS, Joint Petitioners and the other Parties have developed a comprehensive list of conditions of merger approval, as set forth in Attachment A hereto, which would be acceptable to them, which conditions address in a reasonable fashion the issues raised by the Parties in this proceeding about the impact of the proposed merger on Atlantic and its customers, and have executed this Stipulation (the "Signatory Parties"); and

NOW, THEREFORE, for and in consideration of the terms and conditions herein, the Signatory Parties executing this Stipulation HEREBY STIPULATE AND AGREE as follows:

1. Board Order. It is a condition of this Stipulation that the Board adopt a final Order approving the Merger and this Stipulation without change or further conditions. It is

² The City of Vineland withdrew as a party-intervenor from this proceeding on March 13, 2002, and is no longer a party to this matter.

the further condition of this Stipulation that the Merger be consummated. Should the Board fail to adopt a final Order approving the Merger and this Stipulation, or should the Merger not be consummated for any reason, then this Stipulation shall be deemed null and void and of no force and effect. In the event either condition is not satisfied for any reason, then neither the existence of this Stipulation nor its provisions shall be disclosed or utilized by any Signatory Party or person for any purpose whatsoever, including in this or any other proceeding.

2. Conditions of Merger. The conditions of merger agreed to by the Signatory Parties are set forth in Attachment A hereto, and are included herein as if fully written.

3. Reasonableness of Stipulation. The Signatory Parties agree that this Stipulation represents a reasonable balance of the competing interests involved in this proceeding. Based upon their review of the record and the agreements reflected in this Stipulation, the Signatory Parties are satisfied that the statutory criteria for approval of petitions involving acquisitions of control and transfer of controlling stock ownership of a New Jersey public utility, set forth in N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, and N.J.A.C. 14:1-5.10 have been satisfied. More particularly, the Signatory Parties agree that the record herein and the conditions of the Merger set forth in Attachment A support the findings and conclusions that the Merger will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of Atlantic or on the provision of safe and adequate utility service at just and reasonable rates. Attachment A hereto is organized by headings based on these four criteria and also includes a grouping of additional public interest conditions. The Signatory Parties further agree that consummation of the merger with the conditions set forth in Attachment A hereto supports a Board finding that the Merger is not contrary to the public interest and therefore the change of control should be approved.

4. Termination. Notwithstanding anything to the contrary set forth herein, upon the occurrence of any of the following events this Stipulation shall terminate:

- (a) if the Board issues a decision disapproving the Stipulation; or
- (b) if the Board issues a written order approving this Stipulation subject to any condition or modification of the terms set forth herein which a Signatory Party adversely affected, in its discretion, finds unacceptable. Such Signatory Party shall serve notice of unacceptability on the Parties within three (3) business days following receipt of such Board order. Absent such notification, the Signatory Parties shall be deemed to have waived their respective rights to object to the acceptability of such conditions or modifications contained in the Board order, which shall thereupon become binding on all Signatory Parties; or
- (c) if for any reason the Merger is not consummated.

5. Expeditious Board Approval. Each Signatory Party agrees to use its best efforts to ensure that this Stipulation will be submitted to the OAL for approval as soon as possible. Each Party also agrees to use its best efforts to obtain the approval by the OAL of this Stipulation without modification or condition and to urge the Board to issue its written order approving this Stipulation and the Merger as soon as practicable.

6. Waiver of Rights of Appeal. Subject to paragraph 4, each Signatory Party specifically waives any right it may have to seek rehearing of or to appeal an order by the Board approving this Stipulation in the manner provided for herein.

7. Reservations.

(a) It is specifically understood and agreed that this Stipulation represents a negotiated compromise resolution which shall be binding on the Signatory Parties (and their successors and/or assigns) and that, except as provided herein, no Signatory Party, nor

any other person shall be deemed to have approved, accepted, agreed, or consented to any principle underlying or supposed to underlie the Stipulation except as contemplated in Attachment A.

(b) Additionally, no Signatory Party shall be deemed to have waived its litigation rights and positions in the event this Stipulation is not approved by the Board as submitted to the Board without modification or condition, or in the event the Merger is not consummated. Although binding as between and among the Signatory Parties, this Stipulation represents a negotiated compromise and, therefore, this Stipulation may not be cited as precedent for or against any Party in any other proceeding except as contemplated in Attachment A.

(c) The Signatory Parties further request that the Board specifically recognize that the unique resolution of this proceeding shall apply only to this case and that any similar future cases shall be reviewed by the Board on an individual basis and that the terms of this Stipulation shall not necessarily be used as a reasonable resolution of any similar future cases.

(d) It is specifically understood and agreed that this Stipulation is an integral settlement and that the various parts hereof are not severable without upsetting the balance of consideration achieved among the Signatory Parties.

8. Amendments. This Stipulation may not be amended except by a written instrument executed by each of the Signatory Parties. Each Signatory Party may, only by an instrument in writing, waive compliance by any other Signatory Party with any term or provision of this Stipulation. The waiver by any Signatory Party of a breach of any term or provision of this Stipulation shall not be construed as a waiver of any subsequent breach.

9. Counterparts. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Signatory Parties.

10. Governing Law. This Stipulation shall be governed by and construed in accordance with the laws of the State of New Jersey.

11. Assignments. This Stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither this Stipulation nor any of the rights, interests or obligations hereunder shall be assigned or delegated by any Signatory Party without the prior written consent of the other Parties.

12. No Third Party Beneficiaries. Nothing herein expressed or implied shall be construed to give any person other than the Signatory Parties (and their successors and permitted assigns) any legal or equitable rights hereunder.

13. Captions. The subject headings of the sections of this Stipulation are inserted solely for the purpose of convenient reference and are not intended to, nor shall they, affect the meaning of any provision of this Stipulation.

14. Notices. Any notice, request, demand or statement which any Signatory Party may give to any other Signatory Party pursuant to the terms of this Stipulation shall be in writing and shall be considered as duly delivered as of the date and time actually received by the other Signatory Party by personal delivery, facsimile, registered or certified mail (postage prepaid) or nationally recognized overnight courier service, addressed to said Party's counsel of record in this proceeding, except that notice to the Staff of the Board of Public Utilities may only be provided by personal delivery, registered or certified mail, or nationally recognized overnight courier service filed with the Board's Secretary.

15. Entire Agreement. This Stipulation is submitted to the Board for approval as a whole. If a Signatory Party is adversely affected by a modification or condition to the Stipulation and provides timely notice in accordance with Paragraph 4, then the Stipulation shall be ineffective and void.

IN WITNESS WHEREOF, each Signatory Party hereto has caused its duly authorized officer or representative to execute and deliver this Stipulation as of April 15, 2002.

Atlantic City Electric Company,
Conectiv Communications, Inc.,
Pepco Holdings, Inc.

By: _____
Stephen B. Genzer, Esq.

Staff of the New Jersey Board of
Public Utilities

By: _____
Grace Kurdian, DAG

Seema M. Singh, Acting Director and
Ratepayer Advocate

By: _____
Andrew K. Dembia, Esq.

Independent Energy Producers of
New Jersey

By: _____
Andrew Indeck, Esq.

The New Power Company

By: _____
James H. Laskey, Esq.

Shell Energy Services

By: _____
Steven S. Goldenberg, Esq.

ATTACHMENT A

Competition:

1. Atlantic City Electric Company ("Atlantic") will transact business with Pepco Holdings, Inc.'s ("PHI") generation and marketing affiliates in the same manner as Atlantic transacts business with unaffiliated competitive generators and marketers, will provide no preferences to such affiliates and will provide no competitive information to such affiliates that is not provided on the same basis and contemporaneously to such unaffiliated entities. Notwithstanding the above, it is understood and agreed that PHI's service corporation, generation and trading affiliates will provide Atlantic with research and analyses concerning energy markets and pricing, energy risk management support and related services which research and analyses will not promote PHI's generation business or trading operations. In procuring power for Atlantic's New Jersey Basic Generation Service ("BGS"), (i) Atlantic and PHI shall only use designated individuals who are not purchasing or selling power, natural gas or financial instruments for their competitive affiliates, and who are employees of an organization which is separate from PHI generation or trading affiliates, which may be Atlantic, in which employees or their managers receive no compensation as the result of sales of power achieved by PHI generation or trading affiliates, except incentives provided through overall corporate goals and not directly through sale of power except as they affect earnings per share or similar measures; (ii) that employees who purchase power for Atlantic BGS shall operate in an area that is physically distinct from the wholesale trading function (i.e., separated by floor, wing or other building); and (iii) such purchases will be made specifically on behalf of Atlantic which will have its own identified supply portfolio. Additionally, Atlantic's utility load forecasting will be

performed by employees of the utility or the service company independent and separate from the trading function. Finally, Atlantic will not, directly or indirectly, convey any preference regarding the purchase of energy for Atlantic's New Jersey BGS to its competitive affiliates through the merged entity's service corporation, or through Pepco or PHI.

2. PHI will operate its generation, marketing and trading functions distinct from Atlantic's transmission and distribution business as separate corporate entities with separate cost accounting, separate operating staffs below senior officer level, and locations for operating personnel that are physically separated by address, floor, or wing of building, with appropriate protections in the computer system to give effect to this separation. However, individuals performing general corporate functions through PHI's service company such as legal, regulatory, accounting, treasury, insurance, tax, and other administrative functions (including, but not limited to, human resources, building maintenance, vehicle and janitorial services) may provide such services to Atlantic and to entities performing generation, marketing and trading functions, so long as such individuals properly assign their time and costs to the proper entity and otherwise comply with requirements for non-disclosure of information as contained herein subject to the provisions of paragraph 15 below.

3. Any transfer by Atlantic of competitive information from Atlantic to any generation, marketing or trading affiliate of PHI will be contemporaneously made available to non-affiliated generators/suppliers, including competitive information regarding viable locations for development of generation projects, the status of internal policies on transmission and distribution issues, data and analysis of customer growth and new customers, customer transfers to other electric power suppliers, natural gas intra and inter-state pipeline issues and natural gas

supply issues. Such dissemination shall be made via a public posting on a nondiscriminatory basis.

4. Atlantic will provide no preference to PHI generation functions in the evaluation of and contracting for transmission interconnection construction and services or any other utility service.

5. Atlantic will provide no competitive information to generation affiliates of PHI related to operations, output or expansion of any non-utility generation. PHI shall assure that its energy trading groups do not receive competitively sensitive information from Atlantic regarding non-utility generators through the measures identified in numbered paragraph one above.

6. Atlantic shall implement standards and procedures consistent with the terms of this Stipulation and also consistent with Board policies, standards and regulations, to prevent preferences and improper flow of information between Atlantic and PHI, including PHI's service corporations and its generation or marketing affiliates. These principles and procedures shall also be embedded in employee operating procedures and other appropriate documents, copies of which shall be provided to the Board within six months of the merger closing. Periodic compliance training of employees shall be conducted so that employees are fully informed of the commitments herein and the associated restrictions on their activities as employees.

7. Atlantic will procure its net power supply requirements for its New Jersey BGS customers in a manner that provides no preference to PHI or other affiliated sources of generation, to any generation addition (expansions or new generation) which PHI affiliates may be planning, to PHI's trading group, or its retail marketing group(s).

8. Atlantic will provide concurrent notice to Signatory Parties to this proceeding of the filing with the Federal Energy Regulatory Commission of any power purchase agreements

(or agreement renewals) between PHI generation or trading affiliates and Atlantic for New Jersey power sales of longer than 90 days. The Signatory Parties reserve the right to argue that said purchases are subject to Board review.

9. The provisions of this Stipulation will apply to any successor companies to PHI or affiliates of PHI in the same or similar business activities involving Atlantic.

10. The provisions of this Stipulation related to preventing subsidy, improper transfer of information or preference to PHI's competitive affiliates by Atlantic shall also apply so as to prevent PHI's service corporation, or any other affiliate acting on behalf of Atlantic, from acting as the intermediary for any such subsidy, improper transfer of information or preference.

11. Atlantic, PHI and its generation and trading affiliates are not precluded from taking any steps necessary in a time of Emergency. Emergency means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of emergency procedures as defined in the PJM Manuals. Any such emergency situation shall be reported pursuant to the Atlantic City Electric FERC-approved standards of conduct, pursuant to 18 C.F.R. §37.4.

12. Disputes concerning alleged violations of these provisions may be submitted for resolution to the Board, which has jurisdiction over the terms of the Stipulation and which shall have authority to take such action as it deems appropriate, consistent with applicable law.

13. Atlantic cannot petition for any alteration of these provisions for four years from the date of the BPU's issuance of a final Order in this proceeding. After the four year period,

Atlantic will provide Signatory Parties of this Stipulation with 90-days advance notice of its intent to file a petition with the BPU seeking such changes and engage in good faith discussions related to the proposed changes with any Signatory Party so requesting. Atlantic will have the burden of proof to demonstrate that a change or changes in law, regulations or circumstances has occurred such that continued enforcement of these provisions is unduly burdensome or unreasonable, and that amendment or termination of these provisions will not harm the development of a competitive energy market. Unless altered by the Board in an interim order, the provisions set forth in paragraphs 1-13 shall remain in effect during the pendency of any Board proceeding seeking alteration of these conditions.

14. Atlantic agrees to honor existing contracts with non-affiliated, non-utility generators including future modifications that may be approved by the New Jersey Board of Public Utilities.

15. PHI filed an application for approval of a service company agreement and related cost allocations with the U.S. Securities and Exchange Commission ("SEC") on January 9, 2002. Pursuant to N.J.S.A. 48:3-7.1, Atlantic will provide the Board and Signatory Parties with a copy of that SEC filing, and petition the Board for approval of a new service company agreement to be applicable for ratemaking purposes. Upon closing of the merger, Atlantic agrees to use the existing service agreement pending Board approval of a new service company agreement.

Rates:

16. Non-recovery of Certain Costs: Atlantic agrees not to seek recovery in future rates of New Jersey's portion of: (1) merger transaction costs (as estimated and set forth below

and as shown on page 33 of Form U-1 (dated July 20, 2001) on file with the SEC); (2) the merger acquisition premium paid by Pepco; (3) the cost of any termination or severances that occur within a 24 month period following the closing of the merger, including merger-related severances or terminations that are agreed to by Atlantic, Pepco or PHI within the 24 month period that becomes effective only after the close of the merger.

17. Base Rate Proceeding: The Signatory Parties acknowledge that the Board's Final Order in Docket Nos. EO97070455, EO97070456 and EO97070457 directed Atlantic to make a filing, no later than August 1, 2002, as to the proposed level of all unbundled rate components beginning August 1, 2003.³ The Signatory Parties recommend that the Board modify its earlier decision and adopt the following: Atlantic will not make a filing concerning its base rates, and will not file a proceeding to increase its base rates (hereinafter a "Base Rate Proceeding") before October, 2003 unless otherwise ordered by the Board. The term "base rates" refers to Atlantic's regulated rates for distribution delivery service. This limitation would not apply to other components of Atlantic's rates, including clauses such as the Basic Generation Service rate, Societal Benefits Charge, Net NUG Charge, Transition Bond Charge, and Market Transition Charge, as well as any clause designed for the recovery of the deferred balance, which will continue to be set and revised in accordance with the requirements of the Board.

18. Deferred Balance: Pursuant to the Board's Final Restructuring Order in Docket No. EO97070455 et seq., Atlantic is maintaining a Deferred Balance for *inter alia*, certain generation-related costs. In order to provide definitive benefits to customers, Atlantic agrees to reduce its Deferred Balance by \$30.5 million of such past deferred generation-related costs upon the closing of the merger. Atlantic will write-off such amount effective as of the closing of the

³ In the Matter of Atlantic City Electric Company - Rate Unbundling, Stranded Cost and Restructuring Filings, Final Order, BPU Docket Nos. EO97070455, EO97070456 and EO97070457 (dated March 30, 2001), at 84.

merger, and the Joint Petitioners shall provide the Board's Divisions of Audits and Energy with the proposed form of appropriate journal entries within 30 days of the closing of the merger. These journal entries and subsequent accounting treatment are subject to Board approval. If the merger is not consummated for any reason, then no adjustment to the deferred balance as set forth above shall be made.

19. Transaction Costs: With respect to merger-related transition costs other than termination and severance costs, Atlantic notes that defining the categories of costs precisely at this point in time is difficult. It will be presumed as part of this settlement that costs incurred more than 24 months after closing of the merger are not merger-related. The Signatory Parties, however, may challenge the presumption and inclusion in rates of such costs in subsequent rate proceedings. In future rate cases, Atlantic has the burden of proof that its rates are just and reasonable and reflect expenses that are properly includable in its revenue requirement computations.

Petitioners agree to prepare and maintain an itemized breakdown of the various merger transaction costs on a sub-account or transaction basis with supporting detail. Post-merger PHI agrees to provide copies and/or make available for inspection by the Board and its Staff, the original accounting books and record(s) of any or all of the aforementioned costs. Copies of the transaction cost summaries, will be completed and provided to the Board and its Staff no later than one year following the date of the closing of the Merger. The estimated merger transaction costs, as filed with the SEC in Form U-1 (dated July 20, 2001), are as follows:

Commission registration fees	\$ 959,650
Financial advisors' fees (PHI)	\$ 9,100,000
Financial advisors' fees (Conectiv)	\$ 19,800,000
Accountant fees	\$ 600,000
Legal fees	\$ 7,000,000
Stockholder communication and proxy solicitation expenses	\$ 4,336,919
Miscellaneous	\$ 4,000,000
Total	\$ 45,796,569

20. Capital Structure: Petitioners recognize the authority of the Board to determine appropriate capital costs and capital structures when setting utility rates for Atlantic. Atlantic agrees to file, in all future base rate cases, information sufficient for parties to use two alternative capital structures. One of the alternatives would be the use of a consolidated capital structure based on the capital structure that is maintained by PHI (the holding company). The second alternative would be a stand alone Atlantic capital structure. The parties to future base rate cases will be free to argue for the benefits of using either capital structure for ratemaking purposes or another alternative.

21. Books & Records: Pursuant to statute, if PHI and Atlantic desire to move Atlantic's accounting records from Wilmington, DE, they will obtain Board approval. Any such request would include commitments as to access to the records that currently apply to the books and records as specified herein or as the Board deems necessary. PHI agrees that Atlantic shall maintain its books and records in accordance with the Board-approved Uniform System of Accounts or as otherwise prescribed by law or regulation. In addition:

- a. PHI and Atlantic agree that post merger Atlantic will provide and/or make ready for review by the Board and its Staff any or all of its original accounting books and records, upon request and subject to any appropriate confidentiality protections, within twenty (20) working days unless otherwise specified by the Board.
- b. Post-merger PHI agrees to make its books and records available to the Board and its Staff to the extent that they pertain to the operations of Atlantic.
- c. Post-merger PHI agrees to provide computer access and/or the printed results of all activities related to operations of Atlantic under appropriate confidentiality protections.
- d. Post-merger PHI agrees to either provide any or all of the original books and records of Atlantic as maintained in the ordinary course of business and the records of PHI related to Atlantic's operation at Atlantic's New Jersey offices, or pay all travel and travel related expenses incurred by the Board or its Staff in the performance of their regulatory responsibilities.
- e. PHI agrees that Atlantic will notify the Board of any material change in the administration, management or condition of the books and records and related documentation of Atlantic, which notice shall be sent to the Board Secretary and Directors of the Board Divisions of Energy and Audits within ten days of the event.
- f. Petitioners acknowledge N.J.S.A. 48:2-16.4 et seq. and agree to allow the Board's Staff to conduct various focused audits, management audits or reviews of Atlantic or PHI or any of its subsidiaries (with respect to PHI's or such subsidiary's transactions with Atlantic) as part of its continuing monitoring of Atlantic commencing no sooner than

one year after the Board's Order approving the Merger, and subject to any appropriate confidentiality protections.

- g. Petitioners agree to file a report with the Board fully describing the post-merger corporate structure and various corporate relationships in sufficient detail to allow the Board's Division of Audits Staff to effectively monitor all affiliate relationships that include Atlantic as a party. The books, records and supporting details of the affiliate transactions will be made available to the Board's Staff upon request under appropriate confidentiality protections. In addition, the Petitioners agree to perform a comparative analysis of the affiliate relations standards applicable to PHI, Conectiv and Atlantic in New Jersey, Delaware, Maryland, Virginia and the District of Columbia and the methods by which PHI, Conectiv and Atlantic are complying with these varying standards, the results of which will be filed with the Board within six (6) months following the closing of the merger.
- h. Atlantic agrees to an annual audit of its deferred balance.
- i. Upon request, Atlantic will make available to the Board's Division of Audits, for review in Atlantic's offices, copies of all internal Atlantic audits and internal audits of Atlantic's affiliates pertaining to transactions with Atlantic, subject to appropriate confidentiality protections.
- j. Subject to execution, where appropriate, of acceptable confidentiality agreements, copies of the U.S. federal income tax returns of PHI, Conectiv and Atlantic or any other entity consolidated with any of these companies for the purposes of federal income taxes shall be made available, at the location where such copies are normally maintained by such companies, to the Ratepayer Advocate and the Board's Staff to the

extent that the Board determines that the information contained therein is necessary to resolve any regulatory or financial issues impacting Atlantic. The terms and conditions of subsection d above shall apply in this instance. This provision shall not impair the rights of any of the Signatory Parties in any other proceeding.

Employees:

22. Atlantic agrees to honor existing union contracts, which contracts include specific provisions relating to the preservation of union jobs for employees represented by the union local and relating to severance and benefits. Atlantic agrees that for the four-year period after the closing of the merger, no utility operating personnel in New Jersey (either union or non-union) will be terminated, except for cause, in accordance with the union contract for those union employees, or otherwise in accordance with Atlantic's policies for non-union employees. The number of utility operating personnel in New Jersey will remain substantially at its present level of approximately 950 people. Atlantic agrees to maintain an appropriate staffing level to ensure the continued provision of safe, adequate and proper service. Atlantic also acknowledges its continuing obligation to comply fully with the Board's order in Docket No. EA99070484.

23. Atlantic and PHI agree that Atlantic will honor all Atlantic pre-merger contracts, agreements, collective bargaining agreements and commitments, including pensions and retirement benefits, which apply to current or former employees of Atlantic.

Safe & Adequate Service:

24. Low Income Programs: The Signatory Parties acknowledge that the Board of Public Utilities recently issued its Interim Order in Docket No. EX00020091, concerning the

establishment of a Universal Service Fund ("USF"). Atlantic believes that such proceeding is the appropriate forum for resolution of any additional USF. In the spirit of compromise, Atlantic agrees to support the Division of the Ratepayer Advocate's proposition that Atlantic's USF program should be under the management of an outside, independent administrator. However, it is Atlantic's position that the money collected from Atlantic's electric distribution customers will only be used for USF programs involving the electric utility bills of Atlantic's customers. Atlantic will not oppose a percentage of income, or "PIP" program, as part of the USF proceeding.

25. Service Level Guarantees: In its Petition, Atlantic proposed a total of 7 service level guarantees ("SLGs") consisting of 5 customer service guarantees (regarding appointments, new connections, residential billing accuracy, call center service level and call abandonment) and 2 reliability guarantees (restoring service after an outage and individual circuit performance). The originally proposed SLGs were discussed in the testimony of the Petitioners' witness Derek W. HasBrouck, and were described in detail in a Customer Service and Reliability Guarantees Report (included as DWH-2 of Mr. HasBrouck's testimony, and attached hereto as Exhibit 1). The Signatory Parties have agreed to Atlantic's implementation of the proposed SLGs subject to the specific modifications set out in this Stipulation. The SLGs shall apply irrespective of the entity that supplies the customer's energy, (i.e. customers who obtain energy from third party suppliers not affiliated with Atlantic or PHI will be entitled to the benefits of the SLGs on a nondiscriminatory basis).

- a. For "New Residential Customer Installations," the guarantee will be extended to cover re-energizing existing services at the same premise. Atlantic will establish an internal goal for such re-energizing to occur within 3 business days, but the guarantee will

apply only if there is a failure to re-energize within 10 days. Atlantic agrees to work with the Board's Division of Customer Relations to develop a remediation plan in the event that a significant number of complaints are received by the Board concerning re-energizing existing services.

- b. For "Outage Restoration," Atlantic will make a \$50 payment to a customer for each full 24 hour period in which Atlantic fails to restore service to that customer.⁴ Atlantic agrees that any customer credit payments made as a result of any SLG will not be recoverable from customers. Nothing herein relieves Atlantic of its primary obligation to comply with the terms of N.J.A.C. 14:3-3.9 to restore service as promptly as possible consistent with safe practice. Nor shall the terms herein act as a precedent or supersede any future Board orders on this issue. Atlantic further agrees that for the first two years following the closing of the merger it will report quarterly to the Board the amount of the payments made to customers pursuant to the Outage Restoration SLG, with the duration and dates of the outages.
- c. For the "All Trunks Busy" ("ATB") measurement, Atlantic will provide the Board with a monthly report. If statistics show that this condition exists for greater than 5% of the time for three consecutive months, Atlantic agrees to discuss and, if necessary, to develop a remediation plan in meetings with Board Staff.
- d. Atlantic agrees to work with the Board's Division of Customer Relations and Division of Service Evaluation regarding disconnection policies to the extent that concerns arise in the future.

⁴ The following examples illustrate how payments would be computed pursuant to this guarantee. If an outage lasted 20 hours, no payment would be made. If an outage lasted 26 hours, a \$50 payment would be made. If an outage lasted 49 hours, two \$50 payments would be made.

- e. Atlantic will adopt an annual target of no more than 1,500 customer complaints per year to the Board. If the number of customer complaints exceeds 1,500 in any year, Atlantic agrees to meet with the Division of Customer Relations to discuss and, if necessary, to develop a remediation plan.
- f. Atlantic will adopt an annual average target for call center calls answered within thirty seconds. Atlantic's target will be 70% of all calls answered in thirty seconds by the end of year-1 (after the closing of the merger) for all customers, and 75% answered in thirty seconds by the end of year-2 (after the closing of the merger) for all customers, as measured by average annual numbers.
- g. Atlantic commits to maintaining regular, on-going communications with the Board's Division of Customer Relations with the scheduling of meetings in person or telephonically, at least monthly or as the parties otherwise agree, between a representative of Atlantic knowledgeable about these issues and the Division of Customer Relations.
- h. The Signatory Parties have agreed that for purposes of all calculations in the Service Quality Section of this Stipulation that major storm or other major weather related events should be excluded from those targets and average annual calculations.
- i. Upon the closing of the merger, Atlantic acknowledges that it will remain subject to all of the then-effective Board rules, regulations and requirements with respect to customer service and reliability. Atlantic will continue its programs in compliance with the Board's Orders in its outage and reliability investigations, Board Docket Nos. EA99070484, EX99070483 and EX99100763. These requirements include, but are

not limited to, requirements contained in the Board's Interim Electric Distribution Service Reliability Quality Standards set forth at N.J.A.C. 14:5-7.

- j. Petitioners will commit their resources and workforce to directly and quickly address Atlantic's storm restoration problem areas on a priority basis over non-PHI companies.
- k. Atlantic's proposed SLG regarding individual circuit performance has been deleted and is not a part of this Stipulation.

26. Annual Statistical Report: On an annual basis following the closing of the merger, Atlantic will provide the Board and the Division of the Ratepayer Advocate with an annual statistical compilation indicating Atlantic's performance on the proposed SLGs, and describing plans for remediation of deficiencies, if necessary and appropriate.

27. MAIFI: On a semi-annual basis, Atlantic will provide the Board with a compilation of equipment operations that resulted in momentary interruptions of service lasting less than five (5) minutes. This information will be used by the Board's Staff as research data only, and is not in any way to be construed as an indication of the performance of Atlantic's system in its entirety, or to be used as an indication of Atlantic's Momentary Average Interruption Frequency Index ("MAIFI").

28. Corporate Presence: For at least five years from the date of the merger closing, Atlantic will maintain a regional headquarters in southern New Jersey, under the leadership of a regional vice president, with knowledge of New Jersey and state issues, located at that facility. At the conclusion of the five-year period, Atlantic shall continue to maintain a corporate presence in New Jersey.

29. Customer Payment Centers: Atlantic will retain its existing New Jersey customer payment centers (i.e., Atlantic's walk-in offices where customers can pay bills to Atlantic

employees), for a period of at least 4 years following the closing of the merger. At any time, should Atlantic seek to relocate any such center or centers to another location in New Jersey, Atlantic will fully comply with the notice and approval requirements of N.J.A.C. 14:3-5.1 and with any other applicable statute, law, regulation or Board Order.

30. Collection Policies: Atlantic will provide Board Staff with a copy of, or description of, the collection policies that will be used after the merger to the extent they differ from Atlantic's current practices. In any event, collection policies implemented will comply with applicable Board regulations with respect to collections practices.

31. Call Center Operations: For at least 4 years after the closing of the merger, Atlantic will maintain its existing call center operation located in New Jersey. Should any new, additional call centers begin serving New Jersey customers, Atlantic will provide Board Staff with the location of any such call centers. All call center operations, no matter where situated, will be staffed by representatives trained and capable of providing customers with at least the same quality of customer service as customers receive today. Such representatives will be trained and be familiar with Atlantic's service territory issues, New Jersey regulations, Board policies, Atlantic's tariffs and the New Jersey Customer Choice Program. Atlantic agrees to notify the Board and the Ratepayer Advocate at least 90 days prior to relocation of any said call center. In addition, the Signatory Parties recognize that the New Jersey call center will be supplemented by call center operations located in other states. Thus, if an emergency interrupts operations at the New Jersey call center, customer calls will be routed to such other call center operations. In addition to Company-owned facilities, Atlantic is engaging an outside contractor to provide call center services, in the event no Company call center operation is available due to emergency conditions.

32. Customer Information Program: Within 45 days of the closing of the merger, Atlantic will develop and submit for review by Board Staff and the Division of the Ratepayer Advocate a Customer Information Program designed to inform customers of the merger, the continued oversight of the Board and the continuity of Atlantic's customer service procedures.

Other Provisions:

33. Board of Directors of PHI: At least two of the directors nominated to serve on the Board of Directors of PHI will be persons who are now members of the Board of Directors of Conectiv. In addition, Atlantic will provide information to the Signatory Parties about the directors, with respect to their familiarity with New Jersey issues.

34. Charitable Contributions: Upon the closing of the merger, Atlantic will make a one-time contribution in the amount of \$1,000,000 to a fund which will be available to the New Jersey Department of Education for use as the Commissioner of Education sees fit within the Atlantic service territory. The amount made available would be disbursed during the first 36 months following the consummation of the merger. Through 2006, Atlantic will make contributions to charities in New Jersey at levels at least comparable to its historic, pre-merger levels.

35. Other Actions: SEC regulations restrict registered holding company investments in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs") to 50% of consolidated retained earnings in the absence of specific SEC authorization to exceed that level. Atlantic has advised the Board that PHI has applied to the SEC for authority to acquire or otherwise invest in EWGs and FUCOs in an amount up to 100% of its retained earnings plus \$3.5 billion. This increase in SEC authorization is required so that the merged entity will not be

in violation of the SEC rules upon merger closing and will have some flexibility going forward. The SEC requires input from affected state commissions in considering requests for increased authorization. The Signatory Parties, with the exception of IEPNJ and New Power, hereby request that the Board support PHI's application to secure authority from the SEC to permit PHI investments in EWGs and FUCOs up to 100% of its retained earnings plus \$3.5 billion, and submit a letter to the SEC making the necessary representations concurrent with the Board's approval of the merger. With respect to the previous sentence, IEPNJ and New Power have indicated that they do not oppose the Board's submission to the SEC of the requested letter.

36. Credit Ratings: Atlantic shall maintain a capital structure, dividend policy, and use its best efforts to achieve financial target ratios consistent with investment grade debt ratings as reported by Moody's Investors Service and Standard & Poor's. Any lowering of these debt ratings, resulting in the debt instruments of PHI and Atlantic falling below investment grade, shall be reported to the Board and the Ratepayer Advocate. PHI and Atlantic shall report to the Board and the Ratepayer Advocate any post-merger changes in dividend policy as they occur. The Board may exercise its authority to review in detail the capital structure, including the costs of debt and equity, of Atlantic. In addition, if Atlantic experiences a credit downgrade by any of the major rating agencies after consummation of the merger, it must be reported to the Board, including an analysis of the cost impact to the utility, within 30 working days of the downgrade. Furthermore, a reduction in Atlantic's credit rating below investment grade could trigger a Staff recommendation to the Board for a focused management audit.